IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 76 of 2005

Prasad Ashok Shetye .. Petitioner

versus

Shilpa Chandrakant Pathak .. Respondent

...

Mr.Uday Warunjikar for the petitioner.

Mr.S.S. Salunkhe for the respondent.

CORAM : B.H. MARLAPALLE,J

DATED : 5th September 2005.

P.C.:

1. By the impugned order dated 7th June 2005, the learned Civil Judge, Sr. Division at Malshiras rejected the application at Exhibit-18 filed in Special Civil Suit no.152 of 2004. In the said application, the issue of jurisdiction was raised.. The application came to be rejected solely on the

ground that it was filed belatedly.

2. There is no doubt that issue of jurisdiction has also been raised by the defendant in the written statement filed and a separate application was filed for the same issue u/s.9-A of the Code of Civil Procedure. The parties to the proceedings are the spouses. It was stated that the suit filed for the recovery of alleged damages on account of the purported breach of promise to marry could not be filed in any Court beyond the territories of Ahmednagar town. The defendant pointed out that even in the plaint, it was alleged that the marriage was fixed at Ahmednagar and the promise to marry was also allegedly made at Ahmednagar. As per the allegations made by the plaintiff, promise was breached at Ahmednagar.

3. There is no doubt that the issue of jurisdiction will have to be considered after the parties adduce evidence and therefore, the issue of jurisdiction will have to be framed and decided along with other issues. None the less, the issue of jurisdiction will be the first issue to be decided. The trial Court is therefore directed to frame the

issues including the issue of territorial jurisdiction which shall be decided along with other issues after the parties adduce evidence. The issues to be framed within a period of four weeks from receipt of the writ from this Court and immediately thereafter the parties will go in for recording evidence.

4. Civil Revision Application is therefore disposed of in terms of the above directions and the impugned order is hereby quashed and set aside.
Rule made absolute accordingly with no order as to costs.

5. Writ to go forthwith to the Court below.

B.H. MARLAPALLE, J